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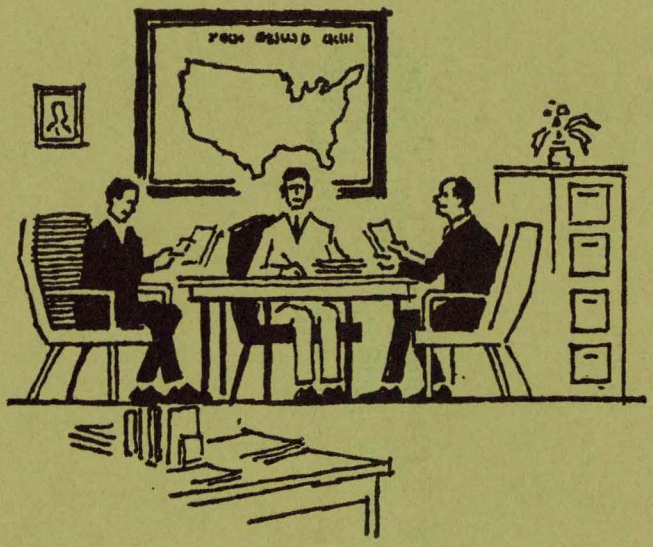
The New Perspectives in Collective Bargaining



Conference Series No. 10

August 1966

CENTER FOR LABOR AND MANAGEMENT
COLLEGE OF BUSINESS ADMINISTRATION
THE UNIVERSITY OF IOWA · IOWA CITY

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The New Perspectives in Collective Bargaining

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FOREWORD

The Tenth Annual Labor-Management Conference was held on Tuesday, April 26, 1966, at The University of Iowa in Iowa City. With the growing role of White House intervention in the collective bargaining process, the topic for this conference, "The New Perspectives in Collective Bargaining," was both timely and appropriate.

However, a conference on this subject, or any other topic, is only as good as the men who staff it. My colleagues and I were pleased and honored to be able to present to the program participants four nationally known figures who were eminently qualified in this area and who journeyed many miles to be with us. They were, in the order of their appearance:

Douglas A. Fraser, Executive Board Member, United Automobile Workers

Francis A. O'Connell, Jr., Director of Industrial Relations, Olin Mathieson Chemical Corporation

Gilbert J. Seldin, Assistant Disputes Director, Federal Mediation and Conciliation Service

John A. Grimes, Staff Reporter, *The Wall Street Journal*

This was a controversial topic, and the conference mirrored this controversy. Government intervention in the bargaining process is adding a new dimension to the specific issue of labor-management relations, and a new dimension to the concomitant but broader issues of work stoppages and the national welfare, national defense, and allegedly changing the foundations of our free enterprise system. While the very nature of a one-day program devoted to a topic of this magnitude makes it difficult to present it in such a way so that the program registrants can relate informally to each of the distinguished session leaders, we endeavored to develop the conference in such a manner so that ample opportunity was afforded to raise questions with each of the speakers.

Don R. Sheriff
Associate Professor and Director
Center for Labor and Management
The University of Iowa

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INTRODUCTORY COMMENTS TO A UNION VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

Anthony V. Sinicropi
Associate Director
Center for Labor and Management
The University of Iowa

Today we hear much talk of the role government is taking in our industrial relations life. Everyone, particularly those who represent labor, management, the academics, the government, and the press, is increasingly aware of the ever-changing government role.

Government interest and participation in bargaining matters is indeed not a new phenomenon. It has been with us since the advent of bargaining —from before the famous Philadelphia Cordwainer's Case through every developing phase of the collective bargaining institution. However, students of industrial relations admit that the tempo of government activity has increased and the effects of such activity are more far-reaching than ever before in our history with the possible exception of war-time crisis situations.

It is patently accepted that unions generally advocate "free" collective bargaining. This perhaps is more true today in view of the strong economic cycle the nation is experiencing.

While government intervention may be helpful for some unions, it is generally conceded that in terms of recent bargaining questions most unions desire a "hands off" policy. For example, let us look at the wage-price guidelines. Overall national productivity figures are restrictive to most unions since unions operate in industries which have experienced a higher degree of productivity advance than the national average. A conformity to a national figure becomes a restriction upon their wage demand pattern. While it can be argued that a union is not bound to a national productivity figure by government policy, it is bound by public sentiment.

The posture the labor movement is taking on this one issue, wage guidelines, was expressed recently by George Meany, President of the AFL-CIO. He said, "The government guideposts are impractical—we see no way they can be applied in an economy such as we have." Meany went on to say, "We just don't like the guidelines policy . . . it destroys our collective bargaining."[1]

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[1] *Business Week,* March 5, 1966, p. 117.

Collective bargaining is still basically a local institution in our society. Most contracts are signed at the local level, most bargaining is carried on at the local level, and most strikes are conducted at the local level. The local character of the bargaining process is, of course, carried on in a social, economic, and political environment which naturally affects the resultant settlement. Since local bargaining is not exercised in a vacuum it must be concluded that these environmental factors are indeed intervening factors.

By the same token, regional or national bargaining, which likewise is not carried on in a vacuum, is gaining strength in the industrial relations world. More people are covered by fewer contracts than ever before. The bargaining relationship established by unions and companies in this more centralized setting is directly connected to the complex economic machinery which must remain in a fine balance to help our nation grow and develop.

To deal with a labor view of these complex questions which arise from these new associations between the parties in the bargaining process, we are pleased to have with us Mr. Douglas Fraser, Executive Board Member, United Automobile Workers.

A UNION VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

Douglas A. Fraser
Executive Board Member
United Automobile Workers

Government intervenes in the collective bargaining process a great deal more than might be supposed by nonparticipants. The legislative branch of government has defined the term, delineated the broad areas of its application, and established certain procedures and bans. Administrative arms of government initiate procedures which can eventuate with orders to participants to heed the law in specific ways which can intervene in the bargaining process. Less frequently, processes of the judicial branch of government intervene and affect the process.

Some form of "intervening" relationship is recognizable between government and an increasing number of subjects within the bargaining process. The bargaining unit description contained in contracts was, in most instances, defined with the intervening assistance of government; parties to a contract may not ignore the intervening views of government regarding the re-employment rights of veterans; in some states, the intervening hand of government denies security clauses for the union; in all states, authority to discuss the union's security at the bargaining table may be denied by government intervention.

Obvious intervening relationships exist between training programs and the Manpower Development and Training Act and the Bureau of Apprentice Training, between jury duty pay and the courts, between overtime premiums and the Wage and Hour law, between paid holidays and the legally declared holidays, between private pension plans and the Social Security Act, between supplemental unemployment benefit plans and the state and federal laws providing unemployment compensation, between cost-of-living escalator wage plans and the government index at the heart of such plans, between the annual improvement factor wage increases and the government productivity studies so thoroughly discussed in the bargaining on this matter.

These are only some of the more obvious but less discussed interventions of government in the field of collective bargaining. Still others exist in such areas as industrial health and safety, female employment, etc. In fact, the parties may modify or terminate a contract and enter into the act of bargaining only after certain procedures of notice-giving required by an intervening government.

In a less direct and apparent way, government also intervenes in bargaining through the total legislative and administrative environment it provides for the participants. Each law or decision can either strengthen or weaken the organization or position of one party vis-a-vis the other. Government can either encourage or discourage actions which can be socially desirable or undesirable. All of these impacts can have related effects at the bargaining table. Later in these remarks, I will discuss some specifics of this nature.

Any discussion of government intervention in bargaining must recognize that most people identify this as government solution of labor-management disputes which cause or threaten strikes. Before discussing existing or proposed methods for such intervention, some discussion of the nature of collective bargaining disputes and strikes is in order.

Our society has traditionally supported the concept of free collective bargaining. This necessarily includes the theory that each party is free to propose to the other and free likewise to accept or reject the proposals of the other. Inherent in such an arrangement is possibility of conflict; indeed the basic function of the process is the solution of conflict. The strike is only one form of that conflict.

Conflict, in other contexts, is not considered antisocial or harmful to society. For instance, competition is another form of conflict. Although competition can result in the closing of an entire enterprise and large groups of people can be adversely affected, the process is considered productive in the long run. Strikes should be judged from the same perspective. In an address in Detroit about one year ago, William Simkin, Director of the Federal Mediation and Conciliation Service, expressed this view by saying, "Collective bargaining is the best known system yet devised for conflict resolution in this important area of our economy. It not only resolves conflicts but does so in a creative manner. The creative aspects far outweigh the negative and destructive elements. It is so basically linked in and part of our system of economic freedom that it is incumbent on all citizens to help preserve, improve and enhance this vital institution."

In the Commerce Clearing House "Labor Law Journal" of June, 1965, NLRB supervisory trial attorney Charles Sandberg stated, "The very nature of our free economic structure carries some important implications; it provides the framework for both the labor problems and their solution. In our democracy, management has a right to manage and labor has a right to organize. Collective bargaining is an integral part of labor-management relations. Strikes and lockouts are useful and necessary adjuncts to free collective bargaining. We, in search for labor peace, must be careful not to destroy these foundations of our free society."

The costs of strikes are frequently grossly exaggerated while its benefits

are not publicized. For instance, knowledge that a strike is the only available alternative has led to resolution of many conflicts. In the absence of the strike alternative, bargaining would be interminable and indecisive, and the absence of a settlement can in some cases be more costly than a strike.

There are times and conditions under which strikes provide an effective catharsis of an industrial system. The alternative of not striking in such a case, while appearing more peaceful, is the more costly and eroding route in its final analysis. Clark Kerr once said, ". . . strikes are constructive when they result in the greater appreciation of the job by the worker and of the worker by management. It is not an uncommon occurrence for productivity to rise after a strike."

The frequency with which strikes occur in our economy is subject to the greatest amount of misunderstanding. The successes of the collective bargaining process are not publicized because, in most instances, they do not constitute "news." Yet success is the most dominant feature of the process. It has been estimated that all but a few of approximately 150,000 contracts are successfully negotiated throughout our economy without a strike. Grievance dispute settlements are even more numerous.

In another forum, William Simkin stated: "One of the characteristics of collective bargaining, frequently overlooked, is the inevitability of resolution." He pointed out that "strike time lost is less than time lost due to the common cold and much less than time consumed by the well-known coffee break."

Actually, the percent of estimated working time lost due to strikes in 1964 (a major bargaining year for my union) was only 18/100ths of one percent. This is higher than the figure for most recent years. Society would be well served if those who lament so loudly over strike time lost would show proportionately greater concern for the time lost in our society due to unemployment, for this was over forty-two times as great as strike time lost in 1964.

After claiming the pertinency of these positive attributes of the strike weapon, I would further assert that the strike weapon should be exercisable without government intervention even where it seems clear that it is not providing one of these desirable functions. I urge this on the simple hypothesis that you cannot destroy freedom in one segment of our society without establishing the basis for its destruction in all other segments. Dictators of other nations have, among their first acts, removed the right to strike and generally placed unions under government surveillance and control.

However, it must be admitted that even in a free nation the right to strike should not be exercised in ways that will cause cessation of absolutely vital services or truly imperil the national health or safety. The difficulty in discussing this point lies in the ease with which some people con-

fuse their simple inconvenience with these categories of exception. The recent transit strike in New York did little to cause irate patrons to recall that it was the first such occurrence in many years; to the contrary, it created an unthinking fervor in favor of some form of government intervention to ban it from the realm of future possibility.

The Labor-Management Relations Act, 1947, presently contains an emergency labor dispute section which permits government intervention in those cases of threatened or actual strike which the President finds will imperil the national health or safety. A board of inquiry in this procedure has only fact-finding functions and is specifically barred from making any recommendations. An injunction may be sought by the President and for eighty days special bargaining efforts are applied in an effort to settle the dispute, including final balloting by workers on the employer's last offer. After this, the injunction is removed and the union is free to strike. The President then submits a report to Congress with any recommendations he deems necessary.

A 1962 report of the President's Advisory Committee on Labor-Management Policy urged a potentially earlier appointment of an Emergency Dispute Board upon recommendation of the Director of FMCS and prior to a formal finding of peril to the national health and safety. By presidential authorization, this board could recommend terms of a settlement in its first effort to settle the dispute. If no settlement is reached, the board would hold hearings on the question of whether the national health and safety is threatened. Upon a presidential declaration of emergency, the board would continue to mediate and recommend settlement, including recommendations for interim changes in employment conditions, for an eighty-day period. The Advisory Committee recommended elimination of the last offer ballot "in view of its demonstrated ineffectiveness in the past." The President, after expiration of the eighty-day period, could refer the matter to Congress with recommendations.

Except for the fact that the labor members of the Advisory Committee felt that the board should be able to order, rather than recommend, interim changes in employment conditions, these proposals had the concurrence of important representatives of both industry and labor. The fact of such a high degree of consensus on the subject is the biggest value of the proposals. I submit that such consensus based on similar conference should be attempted before any meaningful change is made in labor laws.

The other instance of existing legislation directly aimed at preventing strikes is the Railway Labor Act with its National Mediation Board. I am not extremely knowledgeable about this act, but my observation and readings would indicate that the parties have been encouraged to rely upon the dispute procedures of the act to such a degree that bargaining has been

discouraged. When this trend finally resulted in compulsory arbitration of the "fireman" dispute, it provoked University of Chicago School of Business Dean George Shultz to state, "There has been no real private bargaining. What has failed is government-dominated bargaining. Ironically, when this much-government system finally failed completely, the answer was more government—in the form of compulsory arbitration—rather than less. And the irony is the more striking since free and more-nearly-private bargaining is, by and large, working well."

Secretary of Labor Willard Wirtz has referred to railway labor dispute procedures as "marathons of maneuver" and has indicated that such procedures could not be described as "a wholly satisfactory, or efficient, government procedure."

We often hear inventive suggestions ranging from government-supervised strike votes to compulsory arbitration. The former is based on inaccurate presumptions and the latter would destroy free collective bargaining. Others call for government seizure, bans on industry-wide bargaining, non-stoppage strikes, etc.

The basic weakness of all these suggested methods of dispute settlement is illustrated by the statement of John Dunlop that, "Our national industrial relations system suffers from excessive legislation, litigation, formal awards and public pronouncements; that the principal carriers of this disease are politicians, and that the imperative need is to alter drastically our methods of policy formation to place much greater reliance upon the development of consensus." He further urges, "We need a greater sense of the limitations of pieces of paper."

My union, UAW, has a policy ban on arbitrating the terms of our contracts. Reluctant exception has been made on few occasions in our aerospace plants. On one occasion in 1952, a three-man arbitration panel composed of Willard Wirtz, Benjamin Aaron and David Cole stated the problem thus: "These employees have been incapable practically of exerting their bargaining strength when the industry was prosperous because at such times they have been restricted by law as well as by moral deterrents." Under government urging, we have made exception to our basic policy under these conditions.

On the other hand, when issuing strike calls in the basic automobile industry, we have normally exempted the few defense plants that were part of a multi-plant employer. This was motivated by both practicality and patriotism; the majority plants that could strike carried the settlement to the exempted defense plants.

Generally, we have adopted voluntary arbitration in the form of a permanent umpire system. However, there are important exceptions to the jurisdiction of the umpire which can create grievance strikes during the contract

fuse their simple inconvenience with these categories of exception. The recent transit strike in New York did little to cause irate patrons to recall that it was the first such occurrence in many years; to the contrary, it created an unthinking fervor in favor of some form of government intervention to ban it from the realm of future possibility.

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Generally, we have adopted voluntary arbitration in the form of a permanent umpire system. However, there are important exceptions to the jurisdiction of the umpire which can create grievance strikes during the contract

term. Our union was born in response to inhuman production speed-ups in the auto industry; consequently we have a policy of exempting these types of disputes from the umpire jurisdiction. Health and safety grievances are normally also so exempted.

Based on the influences and experiences of my industrial union environment, I hold the serious view that direct intervention by government in the bargaining procedure should be limited to the emergency disputes procedure modified in accordance with the recommendations of the President's Advisory Committee, and to efforts of the Federal Mediation and Conciliation Service, including a continuation and expansion of the process of preventive mediation.

Government should, of course, engage in studies and provide statistical data that will equip free bargainers with greater knowledge of economic facts and help them to achieve a keen realization of their relationship to the rest of our society.

I said earlier I would discuss some specifics of the indirect ways in which government intervenes in the bargaining function. It is my view that the total context provided by such indirect intervention is one which encourages contention rather than peaceful settlement.

For instance, Section 7 of the Labor-Management Relations Act guarantees the right of employees "to bargain collectively through representatives of their own choosing." Other sections of the act, including the "free speech" section and many administrative rulings, are massively absorbed in determining the processes by which the employer can, in my opinion, unduly and wrongfully influence this decision supposedly reserved for the workers. I find much more desirable, and more protective of the basic worker right of choice, those provisions of the Railway Labor Act on this matter which ban not only employer interference and coercion, but also ban simple employer influence on the worker right of decision. The availability of technical means to unduly and wrongfully influence worker choice is an invitation to use such tactics and invites contention.

Likewise, the Railway Labor Act's greater restrictions on the ability of the employer to achieve tactical delay of representation proceedings is preferable to the needless and frequent delays under Taft-Hartley.

All of these provisions mean that government encourages maximum contention at the time an employer gains first exposure to a union among his employees. With such a beginning, is it any wonder that bargaining which follows sometimes leads to aggressive conflict? Government should attempt to remove this encouragement to conflict in this early period.

Another impediment to the smooth course of bargaining is the denial of security to the union, not only by industrialists but also by Taft-Hartley's Section 14(b) and the wrongfully named "right-to-work" laws in some

states. Constructive and responsible collective bargaining can only flourish in a context which concedes that the basic organizational security of each participant will be free from harmful or destructive activity by the other participants, including an intervening government. If government must intervene in the matter of the union's security as an organization, I would suggest a reinstatement of the now-repealed union security authorization votes by the National Labor Relations Board, with two added features. First, the majority should be determined among those voting rather than among those eligible to vote. This would avoid a negation of democracy by apathy. Second, the employer and the union should accept the worker expression as final and binding and the contract should be required to reflect the results of that vote.

Another form of government intervention that is very much under discussion recently is the so-called "wage-price guidelines." Thus far, it is accurate to say that these have, by and large, not been observed. It is somewhat typical of the major public communication media that a great deal more publicity has been given to those instances where collective bargaining has ignored the guidelines than to those where price decisions exceeded the recommendations. In an age of greatly increasing productivity based on rapidly improving technology, any adequate discussion of inflationary trends cannot ignore the significant increases in profit-taking that has occurred in much of our basic industry.

We feel that a more effective method lies in the comments made recently by Walter Reuther when he stated, ". . . there is growing concern, as there ought to be, about the intervention of the Presidency into negotiations and the price-fixing procedures, and I believe that we need seriously to give thought to some new concepts. . . . We believe that when the Presidency intervenes in uncharted matters, that it can do great damage to our democratic structure and great harm to the Presidency. But the problem is there is no mechanism that can bring to bear upon the private decision-making processes, whether it be a labor decision on wages or a management decision on prices, the disciplinary impact of enlightened public opinion. I'd like to suggest that we give serious consideration to the establishment of a price-wage review board and only those corporations responsible for at least 20 percent of the production of that total industry ought to be covered and the unions with which they bargain should also be covered. If a union raises demands that would require price increases, they ought to be obligated to defend the economics of their wage demand before the American people. And if industry threatens a price increase, they ought to be obligated to defend the economics behind that price increase. If we are going to preserve the broadest area in which the private decision-making process continues to function, then we've got to improve the pro-

cedures by which we make private decisions publicly responsible."

The recent transit strike in New York has stimulated much thought that a better way must be found to deal with problems in public service industries.

My union has proposed the creation of a tripartite committee of top people from labor and industry and government to discuss and explore the possibility of creating a new mechanism or procedure by which workers in public service industries such as transportation, power and hospitals can secure their equity without the need of resorting to strike action.

We believe that collective bargaining can be made rational and responsible in terms of the public interest only as collective bargaining is made into more and more a process of joint exploration of the economic facts, so the bargaining decisions can be made upon economic fact and not on the basis of economic power.

INTRODUCTORY COMMENTS TO A MANAGEMENT VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

Duane E. Thompson
Program Director
Center for Labor and Management
The University of Iowa

Continuing the examination of government participation in collective bargaining, we now direct our attention to an examination of management's reaction. Of the parties involved, management has been perhaps the least vocal in an expression of their views. However, comments such as, "True collective bargaining is a myth," ". . . there are worse things than strikes," "Collective bargaining is no longer free nor is it really bargaining," and "It is hard to see how the government can step into one industry and stay out of another," all made by high-level executives, indicate that management's silence cannot be interpreted as acceptance.[1] These comments do, in fact, reflect many managers' concern with the recent increase of government intervention in collective bargaining.

Realizing that government intervention has been a part of collective bargaining for some time and that even at present relatively few industries have been directly involved, we must look deeper than apprehension generated by the existence of government intervention or the immediate effects of specific instances of intervention if we are to account for management's growing concern.

In part this concern is based on the increased frequency of government intervention. In addition, managers are concerned with the basis for the intervention, whether the intervention stems from law or policy such as presidential guidelines. Also the choice of agency to administer the intervention, existing board, special task force, etc., is of concern to management. Finally, managers are pondering the changes in philosophy underlying government's actions and the extent to which it reflects that of the present administration.

Similarly, managers are concerned about the future of collective bargaining. What trends can be identified? Can we legitimately expect that seemingly isolated and specific instances of intervention will remain isolated and specific, or will they establish precedent and become foundations for future policy? Of particular significance to many firms is the extent to which

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[1] "Top Executives Question Today's New Relationship Between Business, Labor—and the White House," *Dun's Review & Modern Industry*, November, 1965.

A MANAGEMENT VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

Francis A. O'Connell, Jr.
Director of Industrial Relations
Olin Mathieson Chemical Corporation

To confine our discussion today to the intervention of government in the collective bargaining process narrows our field somewhat. Yet, our scope is pretty formidable. By way of trying to fix my remarks on the most significant current aspects of it, I have divided government intervention in bargaining into several categories:

1. Intervention by way of the National Labor Relations Act, putting aside for the moment national emergency disputes.
2. Intervention by way of the anti-trust laws.
3. Intervention by way of presidential guidelines.

These three categories don't exhaust the subject, but fairly well cover the idea of government intervention in routine bargaining in the private sector of the economy. There remains the problem, however, of national emergency disputes in the private sector, and the entire problem of labor relations in the public sector. There has been far too much attention paid lately to the matter of public employee strikes for us to be able to overlook that issue altogether, so I will take it up in due course, too. These will be the fourth and fifth categories in my discussion.

Before setting out on the rather perilous voyage I have charted for myself through seas which are stormy with controversial opinions on both sides, I would like to say a word or two about government intervention generally. It is nothing new, of course. Government has been intervening in labor relations and labor disputes in one way or another for a long, long time—well over a hundred years. As far as collective bargaining is concerned, however, the role of government, I think, is more recent. Government intervention in bargaining arrived in a big way in the thirties by way of federal definition and protection of the right to bargain collectively. From that substantial start, government intervention in the bargaining process has been steadily on the increase, so much so that I seriously question whether it any longer makes any sense to talk about free collective bargaining. Collective bargaining isn't free in the sense of being unregulated and unrestrained, and it hasn't been for a long time. What we are really talking about is not free collective bargaining as such, but rather how much more or how much less freedom does it have than it ought to have. To put it

another way, our conference subject isn't so much a question of government intervention or not, but rather how much government intervention and what kind.

The justification for government intervention in private industrial collective bargaining has always been the public interest. That is the excuse, that is the justification, and it is a sound one, of course. We tend to find that in a given dispute the party most sensitive to the public interest tends to be the party who stands, or who thinks he stands, to benefit most from government intervention. To state the obvious, this is usually the weaker party in terms of relative economic strength and bargaining power. Given our dynamic industrial society, there is likely always to be such an imbalance of bargaining power, with here management being more powerful, there labor. Does that mean government intervention is continually appropriate for the purpose of adjusting the balance of power from case to case? I think not. Indeed, I can hardly conceive a more drastic invasion of private rights—and an assault on the integrity of the bargaining process more likely to prove fatal—than to have government feel the need to adjudge and adjust in every case. Does this mean that government intervention is never justified by imbalance between the contesting forces? I don't think that either.

But economic imbalance alone does not justify the government's intervention. Then what does? Does any kind of imbalance justify the government's stepping in? My answer is yes. The government has the right and the duty to correct those imbalances which have been created by its own policy. It is quite true in this sense that government intervention begets more of the same. Regrettable though that incessant pattern may be, it is essential if the government is to discharge its primary function of protecting the rights of all of its citizens and handing down to their posterity some reasonable approximation of the economic system that their parents inherited. That sort of government intervention—the righting of government-created imbalances —cannot, in my opinion, be much longer delayed without crippling the system beyond recognition. That brings us to the NLRB.

Of the many things wrong with the current Board's activities, I want to mention only a few which have special reference to our topic: the Board's excessive interference in the mechanics of the bargaining process, the Board's rulings on the scope of the duty to bargain, and particularly, the doctrine requiring bargaining over management's decisions—the so-called Fiberboard Doctrine.

With reference to the Board's interference in the bargaining process, the Board has thrown out of the window completely the concept which was built into the Wagner Act, which Senator Walsh (one of the sponsors and spokesmen for the Bill) phrased this way: "All this Act does is to cause the

Board to lead the parties to the door of the bargaining room. What they do when they get there is no business of the Board."

That just isn't the rule anymore. In its place there has been a steady encroachment by the NLRB into the area of bargaining, attitudes in bargaining, the manner in which the bargaining duty is discharged, etc.

In the case of G.E., what G.E. was convicted of, aside from being G.E., was a failure, in the opinion of the Board, to display sufficient flexibility. What can flexibility mean in that context except concessions? Yet, the Board is prohibited by the Act from requiring anybody to make concessions and the Supreme Court has told it so.

The Board has also taken a strong position against unilateral action by management, and in doing so it has utterly disregarded management's inherent right to manage and its critical need for flexibility. It is worth noting in this connection that in the brief it filed in the EVENING NEWS case a couple of years ago, the Board conceded that management has a right to bargain with the union for a clause giving it the right to do unilaterally what, if done in the absence of such a clause, would be an unfair labor practice. You can bargain for the right to run your business without consulting with the union at every step of the way, the Board said. But what does it do in practice? Not very long ago it had a case where the management slapped a management's rights clause on the table, and the Board found that this clause by its nature was bound to be so unpalatable to the union that management must have been in bad faith in putting it on the table. The Board found the management guilty of a refusal to bargain in good faith.

Perhaps the most important invasion of management's rights by the NLRB was its decision-bargaining doctrine. That doctrine, as affirmed by the Supreme Court in the Fiberboard case, involved a fundamental point: When management proposes to make a decision (e.g., to contract out), which will affect wages, hours, or conditions of employment, management must bargain not only over the impact of that decision, but also over the very decision itself. Now bargaining over *impact* (i.e., what will be done to lessen the effect of the decision on employees) is one thing. It is appropriate. It is traditional. Decision bargaining, on the other hand, is commanding the employer to take the union into partnership, so to speak, to help him decide whether or not to contract out, shut down, move away, etc. What's wrong with that doctrine? There are several things. First of all, it's wrong as a matter of law. All that the law requires bargaining over are wages, hours, terms and conditions of employment, not management decisions. In order to bring management decisions into the bargaining domain, the Board has to interpret the subject of bargaining as any matter which may *affect* wages, hours, terms and conditions of employment. The Act doesn't say

that. The Congress hasn't said that. The Board said that.

This ruling has, in the end, established a condition that is untenable for effective collective bargaining. Consider the issue of job elimination. Collective bargaining is unsuitable for determining the management decision as to whether or not jobs will be eliminated. The union exists to protect the jobs, to enhance the jobs, to see that they continue and that there are more of them. It's ridiculous, therefore, to expect the union to sit down and bargain with any enthusiasm, let alone good faith, toward the end of eliminating some of the jobs, and in some cases the existence of the union altogether. Collective bargaining by its structure can't handle a case where the positions of the parties are irreconcilable.

What must the NLRB do then? It must exercise restraint. The Board's philosophy may very well be that unions should have a voice in the management of the business. But if that is its view, it has no right to impose it by a distortion of the statute, as it does, thereby working fundamental changes in the traditional roles of labor and management in our society. If this ultimate in government intervention is to come about, the Congress should do it. Meanwhile, the Board would do well, I think, to address itself to correcting the imbalances which its own decisions have created.

Let me turn to the application of the anti-trust laws. The extent of their application came very much to the fore as a result of the U.S. Supreme Court decisions last year in the Pennington and Jewel Tea cases. They were cases in which the Court for the first time in a good many years came to grips with the application of the anti-trust laws to labor relations, and for the first time came to grips with the application of them to collective bargaining. In Pennington and Jewel we are dealing with the question as to what extent collective bargaining, and a union's posture in collective bargaining, can destroy the so-called labor exemption from the anti-trust laws. Justice Goldberg argued that any and all subjects of mandatory bargaining should by that very fact be exempt from the anti-trust laws. But he didn't get a majority of the Court to go along with him. Justice White, who wrote for a majority, said the test is narrower. The subject must be *intimately related* to wages, hours, and working conditions; it is not enough that it is merely a mandatory subject of bargaining.

The Pennington and Jewel cases also brought to light a broader issue: there is a clear conflict between the anti-trust laws and the National Labor Relations Act. The purpose of the National Labor Relations Act is "to promote the practice and procedure of collective bargaining." That purpose was in the preamble to the Wagner Act and it is carried over into the Taft-Hartley Act. The purpose of the anti-trust laws is to prohibit combinations or conspiracies or agreements in restraint of trade: to protect competition. The two are at odds right now. Unions today exercise a clear power to re-

strain trade in the competitive market, and I suggest that a re-examination of policy is in order by the Congress to determine which of these two policies, protection of competition or promotion of collective bargaining, must yield to the other. They can't both co-exist as they now exist. If freedom of trade and competition from undue restraint is still our dominant policy, then the Board must modify its doctrine or Congress must act to reassert that policy by narrowing the scope of collective bargaining.

The third kind of government intervention I want to discuss is intervention by means of presidential guidelines. The primary question here is one that runs through all of the considerations concerning government intervention in collective bargaining. If there is to be intervention, must it not be fair and even-handed? One would suppose that the indisputable response is yes. But is it? Are the guidelines fairly applied? I think we need look no further than the New York Transit Strike to answer that they aren't. If presidential prestige and influence is properly to be brought to bear on wage settlements to assure that they remain within the boundaries of stability, when must that influence be exerted? Surely not, as in the Transit situation, by a soft impeachment, a regretful statement that the guidelines had been breached, *after* settlement had been reached and ratified. After all, the government didn't wait until Bethlehem Steel had actually concluded a contract for structural steel at its advanced price before condemning the price rise. On the contrary, the President moved promptly and loudly as soon as the price increase was announced. He condemned it as being against the national interest, and suggested the motives for it carried some rather nasty overtones of war profiteering. Government efforts and energies did not abate until the price increase had been diminished. Government's timing was the same in attacking price increases in aluminum, copper, and other commodities, and tobacco, where it had stockpile or other leverage.

If the guidelines were, in fact, equitably being followed, what comparable timing could we expect in case of an inflationary wage action by a union? One point certainly would be when the union made its initial inflationary demand, announced its price increase, so to speak, especially since a wage increase demand is so often coupled with an outright acknowledgment that the guidelines are being disregarded, that they do not or should not apply, or that if they do apply, they are wrong and deserve to be disregarded. Certainly it would seem government intervention is needed before the union threatens or calls a strike in support of clearly inflationary demands. This is when presidential influence would count. This is when the national economy is clearly threatened. This is when calamity to the guidelines could be averted. Yet in the New York Transit situation, no one denied or doubted that Mike Quill's several hundred million dollars' worth of demands were

inflationary in terms of the guidelines, but no action was taken. Even when the strike was launched without the slightest modification of union demands —even when after two weeks the union was still insisting on wage increases aggregating 30 percent—the President was silent, and the Secretary of Labor, when he visited New York during the strike, was likewise silent.

Government moved a little closer to facing up to its responsibilities in the matter of the increases demanded by the New Jersey Operating Engineers. The government did step in, although the union frankly told them to stay out of it. But what pressure did it have in mind for the union? Government officials seriously considered bringing pressure to bear on this union by cancelling the *employer's* contract for construction in New Jersey. That hardly seems even-handed. Then, as you know, to everyone's surprise, Webber, the head of the Operating Engineers, suddenly agreed to arbitration by the head of the New Jersey Department of Labor and Secretary Wirtz. It will be interesting to see what happens to the guidelines now in the award in this Operating Engineers case. It will be worth your attention. For, if we are to have guidelines, and it seems we are to have them or risk something stronger, government must somehow summon up the courage and resourcefulness to challenge the big unions which disregard the guidelines, just as it does with big business.

Now I want to turn to national emergency disputes. Again the question seems to be not so much whether there is to be government intervention, but what form it will take. That strikes which threaten the national interest, particularly national defense, can't be permitted seems to go without saying. Although labor isn't happy about the Taft-Hartley injunction, it seems more or less resigned to it. And this is as it should be. At the same time we must bear in mind something else that is often overlooked. Collective bargaining is robbed of an essential ingredient when the strike threat has been removed. That's why discussions of this subject so often bump up against the idea of compulsory arbitration. Now that Congress in the railroad dispute has broken the ice as far as compulsory arbitration is concerned, the threat of it is perhaps more real than it once was.

To avoid compulsory arbitration we are inclined to rely more heavily on mediation, fact-finding and recommendations, public opinion supplying pressure in support of the recommendations. In current thinking there seems to be one proposition upon which nearly all concerned are in agreement: that the Presidential Board, as appointed under Taft-Hartley, should have the power to make recommendations as it does not now have. Those who favor this approach would do well to bear in mind why Congress chose in the Taft-Hartley Act not to give such boards the authority to make recommendations. It was because experience had demonstrated that the

members of such boards in the past had not been even-handed in their approach to the merits of labor disputes. The idea of boards with power to recommend terms of settlements would work if the caliber of the men appointed to such boards were uniformly high, if they were men who would honestly evaluate relative merits of all propositions and not hesitate to brand this or that position of one or another of the parties as excessive or unreasonable. Decisions of this kind do more to establish the integrity of these panels and to command respect for their decisions than anything I can think of.

There is one problem involved in weighing the effectiveness of fact-finding boards with powers to make recommendations. The pressure which such recommendations are supposed to generate seems generally to have been felt more heavily by management than by unions. Management has hesitated as a matter of public relations to reject such recommendations out of hand. As a matter of fact, management usually feels compelled to go along. However, unions, as you know, have not hesitated in a good many cases to reject such recommendations. If this system is to work, unions must be more responsive to the public interest, even when they don't like the recommendations. I suppose this is a call for more statesmanship, although I am well aware of the fact that, in collective bargaining, statesmanship is all too often defined as something that the other fellow is failing to display. At any rate, the problem of making the recommendations effective and producing a settlement still remains.

I suggest that the more drastic alternatives proposed to reconcile the parties—outright prohibition of strikes in essential industry, compulsory arbitration, plant seizure, etc.—should move the parties in such disputes to exercise in their own interest the restraint which they seem incapable in many cases of summoning up in the public interest. Both sides had better take to heart the fact that business as usual, that is bargaining as usual, that is strikes as usual, simply will not be tolerated at the expense of national security. They would do well to bear in mind that any widespread adoption of compulsory arbitration will go a long way toward destroying collective bargaining as we now know it because arbitration of that sort has the inevitable tendency of robbing the parties of the will to settle the dispute themselves.

In this connection let me take a minute to refer to the railroad situation where government intervention took the form of Congressional, rather than Executive, action and resulted, as we all know, in compulsory arbitration. This development bears close watching. Having, as I said, broken the ice in this respect one time, Congress may more readily do it again. Indeed, the railroads are currently pushing for a bill which would make the recommendations of a railroad emergency board final and binding, and, as you

know, other transportation spokesmen have also endorsed the idea of some kind of compulsory arbitration in the shipping and longshore industries. Those who truly fear the debilitating effect of compulsory arbitration on collective bargaining must watch these developments with the deepest concern.

I have, of course, referred to private collective bargaining. The situation, I think, is different with public employees, and before concluding I would like to say just a word or two about that.

The problem of strikes by public employees, I think, is much more easily resolved. The New York Transit Strike dramatized the problem but unfortunately hasn't served to produce a true re-examination in depth of the policies and practices which have led us to these strikes and threats of strikes. The root of the problem, in my opinion, is very simple. It arises from the mistaken attempt to superimpose industrial collective bargaining on the public sector. There are two major reasons why collective bargaining, insofar as it is concerned with fixing wages, hours, and terms and conditions of employment, is inappropriate in the case of public employees. First, industrial collective bargaining has as one of its principal objectives a more equitable distribution of the fruits of the enterprise, of the profits. In government there are no profits to be distributed. Second, as I have already remarked, collective bargaining is ineffectual and useless unless accompanied by the right to exert economic pressure. It is, in other words, useless unless there is the right to strike. Indeed, the underlying pressure of that threat of ultimate economic warfare is an inherent and indispensable element of collective bargaining as it was meant to be. It's built right into it and can't be taken out. Government employees don't have the right to strike. Yet, because it is impossible to divorce collective bargaining, once you permit it to take place, from the strike or the strike threat, government is continually faced with threats of strikes—the transit workers and welfare workers in New York and the teachers, for example.

That is why I say that normal collective bargaining is by tradition and structure inappropriate to public employees. This is not to say that public employees should not have the right to belong to unions, and to have those unions represent them in their day-to-day dealings with management—the teacher to have someone to intervene between her and the principal, the welfare worker between him and his supervisor, etc. This is very, very important with white-collar people, such as most public employees are. Sometimes I think it is more important to them than to some of the people in the plant who are a little better able to take care of themselves. They should have the right to belong to unions who represent them in their day-to-day dealings. The conditions of their employment can be covered by written

agreements just like any other union agreement. They can and should have procedures for the processing and settlement of grievances, terminating, if need be, in arbitration, just as they are in the industrial contract. These and other aspects of union representation are wholly appropriate. What is not appropriate is bargaining over wages, hours, and working conditions. These should be determined, I think, by an impartial public body in the light of all the relevant circumstances: the just needs of the workers, the fiscal problems of the government agency concerned, and, above all, the paramount interest of the public. Such a system will assure that public employees receive fair treatment at all times.

What I propose is not compulsory arbitration. For one thing, arbitration implies an existing dispute, and if you don't have the bargaining build-up, you never have a dispute in that sense to cope with. Even if it were to be argued that the presentation to the public board of the opposing positions of the city (or the transit board, or whoever it happens to be) and the representatives of the workers does constitute a dispute, and that this system is, in fact, a form of compulsory arbitration, this does not matter. The arguments against compulsory arbitration in the private sector do not (or need not) apply in the public sector. So, if this is compulsory arbitration, it is simply an appropriate exchange for abridgment of the right to strike. The paramount interests of the government and the public dictate precisely this situation with respect to public employees.

And so it is my view that the law needs to be amended, as far as New York is concerned, and so with any other municipality that has this problem. A law is needed which will reaffirm the right of public employees to belong to labor organizations, give recognition to their right to have their grievances and complaints dealt with by union representatives, through appropriate procedures terminating in binding arbitration, remove the determination of wages, hours and working conditions from collective bargaining, reaffirm the principle that there is no right to strike, and then set up a professional, qualified board to determine periodically what the wages, hours and working conditions for the ensuing period will be. Perhaps special panels having special expertise in the transit area, the teachers' area, etc., can be inaugurated. Thus, unions among government employees will survive and will continue to have a highly useful function to perform in the day-to-day representation of their members and the presentation of their cases to the wage board. The employees will be protected in their right to belong to and be represented by unions in the many facets of their employment other than collective bargaining, and the public will be protected against periodic strikes and threats of strikes. The government will be relieved of pressures appropriate only to a private employer. Finally, the eco-

nomic interests of all concerned will be safeguarded by the expertise of a qualified body operating in an atmosphere of reason and justice and not under the threat of a catastrophic strike.

INTRODUCTORY COMMENTS TO A PUBLIC VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

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The advantages and disadvantages of the federal government's intervention in collective bargaining must be analyzed not only from the perspective of management and labor, but also from the viewpoint of the public. This public view of government participation in collective bargaining will be highlighted this afternoon.

Government intervention in collective bargaining began as early as 1886 with the federal government providing for arbitration in strikes in the railroad industry. Government intervention has continued in the form of such laws as Taft-Hartley and Landrum-Griffith and through such broad policies as the wage and price guidelines. A specific example of government involvement in labor-management conflicts may bring the government's role into proper focus. In the famous 1961 airline strike regarding who would occupy the third seat of the jet commercial aircraft, be it a pilot or a flight engineer, the following government personnel were involved in the eventual two-year settlement of that conflict: the President of the United States, the Secretary of Labor, the Under-Secretary of Labor, the National Mediation Board, a special presidential commission, a nine-member presidential emergency board, and in all thirty-nine public representatives were involved.[1] But why is the federal government participating in collective bargaining? Bernard Baruch gave one answer. He wrote:

> In recent successions of labor-management problems while the rights and interests of labor and business must be respected, the rights of the public deserve at least equal consideration. Both labor and business have sufficient power to pursue courses which too often are at variance with the public interest. Too often many of the struggles between these two are not only waged at the public expense, but are settled at it.[2]

He concluded by advocating a council of labor-management relations that would have jurisdiction over labor-management issues which the parties themselves could not resolve.

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[1] Willard Wirtz, "Text of Address Delivered Before National Academy of Arbitrators," *Labor Relations Reference Manual,* Vol. 52, January 1 to April 30, 1963, p. 13.

[2] *Ibid.,* p. 11.

Citizens demand that the federal government take steps to resolve labor-management conflict. In many instances public tolerance for strikes is low. Partly, it is a matter of a complex and interdependent economy; no longer is a strike restricted to one firm, industry, or city. Secondly, a shut-down or strike may hurt the public badly before it hurts either party, as was so strongly pointed out in the 1966 New York Transit Strike. Thirdly, whether the public is hurt or not, news and pictures of the strike workers and of the collective bargaining meetings are immediately transmitted through television and radio to every home in the nation. Major strikes are followed and analyzed by citizens throughout the country.

Ironically public tolerance for strikes is very low, even though the figures on workers involved in strikes as a percent of the total employed have been running approximately 3 percent since 1960, the lowest average percentage for any period since 1945.[3]

But if the government continues to be called in to participate in matters of national emergency, or if it is pressured into redefining and broadening the concept of "national emergencies" in labor-management conflicts, will the public interest be better served by this resulting restriction of the private process in bargaining?

Adlai Stevenson once wrote that democracy is not self-executing: we have to make it work. Collective bargaining is industrial democracy. Will the public interest be better served by working within this framework of industrial democracy or in a more planned economy? An independent labor study group sponsored by the Committee for Economic Development recommended that the record of achievement in moderating the bitterness and length of strikes in the United States is so impressive that a moderate amount of conflict is preferable to a system of widespread governmental control.[4] On the other hand, there are those who argue for compulsory arbitration, or as Bernard Baruch advocated, a labor-management council, or even more laws regulating labor and management in their collective bargaining.

This important aspect of collective bargaining, the public interest, will be discussed this afternoon by two men well qualified to offer suggestions, insight, and resolutions on this problem: Mr. John Grimes– Washington staff reporter, *Wall Street Journal;* and Mr. Gilbert Seldin–Assistant Disputes Director, Federal Mediation and Conciliation Service.

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[3] Wendell French, *The Personnel Management Process,* Boston, Massachusetts: Houghton Mifflin Company, 1964, p. 361.

[4] Independent Study Group, *The Public Interest in National Labor Policy,* New York: Committee for Economic Development, 1961, p. 60.

A PUBLIC VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

Gilbert J. Seldin
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Federal Mediation and Conciliation Service

Let me begin by saying that in the Mediation Service we do not consider ourselves a form of government intervention in collective bargaining. Instead we are in rather a unique position to judge objectively the relative positions of each side in a labor-management dispute. We have a certain detached view. We never have to meet a payroll. We never have to walk a picket line. From our point of view we can look askance at the idea of government intervention in dispute matters. The philosophy in collective bargaining is that the government's role is limited to setting the rules of the game. This we support. We feel in the Mediation Service that it is our role to sort of grease the wheels as they go along, to try to help collective bargaining work. The thesis I am going to expound is that collective bargaining is working, despite the fact that you have some highly visible dispute situations which make the headlines. They are rare. They are the extremes. As several people have pointed out, the time lost in strikes is minimal.

Remember that many major disputes never reach the front page because in these cases there is not a strike, or if there is a strike, it is relatively short-lived. People never hear about it. Collective bargaining works. I am not talking now about the small plants, plants with a small number of employees. I am talking about major strikes, like the aerospace disputes of 1965 that were carried over into 1966. Although there were some headlines about them, by and large, collective bargaining worked here. There were some difficult problems.

The tail end of the aerospace disputes was just handled last week in the settlement of the Boeing dispute. The industry was on the verge of a strike of 50,000 people over the country which would have tied up practically all of the missile projects and all kinds of defense projects which were going on, yet you didn't see anything in the newspaper about it because it was settled.

Let me tell you a little about that one. About six months ago there was an eighteen-day strike at Boeing. The real problem in the Boeing negotiations involved seniority. Boeing used a device known as "performance analysis" to determine which employees would be promoted, which workers

would be laid off and in what order, and which employees would be laterally transferred. Boeing's rationale for using this device was that it needed the best workers. We know that one of the basic reasons people join unions is to protect their seniority. And the union principle typically is that the senior man gets first crack at a promotion opportunity. The unions will recede a little only if the senior man lacks the skill and ability to do the job. Boeing was taking a totally different view. This was too tough an issue to be handled in the period of crisis bargaining which took place, and a qualified proposal was made. A study committee was appointed for six months and if they did not reach a satisfactory agreement by that time, the union had the right to strike. It took a lot of work by the mediator and the parties and an agreement was reached which I think both sides are recognizing as a workable solution which, as time goes on, will be improved.

The Boeing settlement is, I think, an excellent illustration of how collective bargaining can be used creatively and successfully, and I think this point is made stronger when we consider that the resolution was adopted by parties who originally held diametrically opposed positions.

Generally I think it is the public, with the help of the press, who exaggerates the danger of a failure in collective bargaining. Although national emergency and public safety disputes are hard to settle and can have serious repercussions if they result in a strike, people tend to press the panic button prematurely. We are continually receiving calls asking us to step in and prevent a potential strike. For example, the defense people will call to say they expect a strike. I have learned to immediately ask for a true impact statement of their situation. Most often I find their fear of a shut-down is exaggerated and the resolution to their problem would perhaps involve a delayed shipment or additional paper work—hardly a reason for calling for a Taft-Hartley injunction.

The point I am making is that if we want a free economy, if we want that kind of a free society, we have to take the disturbances that go with it. If we look at the disputes that get settled and settled calmly like the aerospace disputes where neither a Taft-Hartley Board or presidential board was appointed, we can begin to see how the mediation device functions.

Our attitude in disputes is that we are working with parties who have opposite viewpoints. We think it is most important to understand why they take their positions, for if we can understand that, we are at least on the way to finding a substitute arrangement. We don't look for clean solutions. We feel it sometimes better to have a little gray area in order to have a solution. If a mediator wants to stay in the business, he learns that whatever agreement is reached, it has to be one that the parties themselves arrive at and can operate under.

At the same time we feel it is incumbent on us to step up our own in-

volvement, to really plan in a much better way than we did before. Let me tell you how we planned the aerospace negotiations this year. We are primarily a field organization. In Washington we have only a handful of mediators. We have a supporting staff, a clerical staff, a business manager, but few mediators. Most of our work is done in the field. When we have a large industry like aerospace coming up, we feel we ought to prepare ourselves for it. These days both sides are well advised by experts.

In aerospace we did an analysis. We had the Bureau of Labor Statistics prepare an analysis of existing contracts and key the various items one to the other. We had about a five-page document which gave us all of the background. We had conferences with all of the field mediators who were assigned to these disputes, and went over our information. And our problem was to find what is real: where do we really think people will go, which points were strike issues, which points were not. And as mediators we wanted to know on what issues either party might modify their demands. When these negotiations started, we started meetings at the local level; but rather quickly we utilized the small staff we have in Washington to get involved at the bargaining table working as panels. This is an old device: if one mediator can't do it, two or three might be able to.

Since our present director was appointed we have been involved in "intensified" mediation. One tradition that has grown up about labor-management disputes is that after a strike occurs the case must sit for a couple of weeks. This is traditional. Everyone in the business knows this. Our direction now is to break through this attitude if we can. We are trying to get involved before there is a strike. We are using statistics to show our mediators how many strike cases occurred without any mediation-supervised meeting, how many occurred with one meeting, two meetings, etc.

These are some of the techniques and attitudes in the Service, which I hope will provide a perspective on our agency in collective bargaining. To explain our operations I will turn to the actual everyday mechanics of the Service.

As a procedural point, the moving party in a labor dispute must serve notice. The party—either the employer or the union—who desires changes in the existing contract must notify the other side sixty days prior to its termination, and he must notify the Federal Mediation Service and any state or city agency that might exist thirty days prior to that. This comes under the Taft-Hartley Act. Thus, we have a record of upcoming disputes. We have notices; we can make assignments on the basis of notices. First the notices are screened. And this is something that is done at the regional level. Out of these, say, hundred thousand notices, I suppose a little over 20 percent are assigned for mediation if a mediation need arises. Others are screened out because we have no jurisdiction. We are a federal agency

and unless there is interstate commerce, the case will be screened out. Or a case might be dropped because past experience has shown us that the chances of a dispute are practically nonexistent. Of these twenty-odd thousand, probably 7,500 are active cases where the mediator participates in joint meetings that he has called throughout the country. This is the basic network.

If there is a difficult negotiation, we'll use one of the men from our Washington staff. By the time someone from Washington is sent, the odds are that we can induce both the company and the union to send a higher echelon person to the bargaining table, too, and then meetings can be more effective because there are decision-makers present.

These are some of the things that we can do, and I think we are effective. In the last two years very few cases have gotten beyond our Service and although there are always cases like the Longshore situation on the East Coast and the Gulf or the steel negotiations where the President had to do the ultimate arm-twisting to try to get a settlement, these are rare. I would say that the most realistic way to evaluate both our Service and the general success of collective bargaining is to actually count the number of cases that can honestly be called emergency disputes. If we realize how few there are, and that in most disputes answers are found before they reach that point, I think we have found much better answers than trying to disturb the principle of collective bargaining.

This, incidentally, leads me into pointing out a program that we have started which we hope will help avoid these difficulties. By and large, bargaining takes place in the crisis area. There is a deadline and bargaining takes place against the deadline. Most solutions come just at the eleventh hour, and this is important. The deadline is a lever at the bargaining table and it is necessary to keep things moving. But many of the problems that we face today are so complex that it is impossible to settle them in the last few weeks before the end. We have started a program called "preventive mediation." The Boeing dispute was an example of this for we were able to get the parties to take a full six months to really look at the problem. Basically, I suppose, what we are trying to do is to get people to understand that the other side has problems too. We try in our preventive mediation program to set up communication channels during non-crisis periods. We do this in a number of ways. One way is to arrange pre-negotiation meetings. If we know and both sides know that there are very difficult problems coming up, it sometimes helps if the parties can get together for a year before the contract is over. When we get into pre-negotiation we try to lead it toward early negotiation. We try to get them to the point where both sides are ready, willing and able to come up with answers maybe a couple of months before the deadline. This can be dangerous.

Management might put its best foot forward three months too early and the membership might reject their proposal.

We also try to set up joint committees where we can. I had the good fortune to sit in on a joint labor-management committee in a public utility. And I heard them settle two issues. One of them was the problem of who is eligible in manning changed jobs in a new plant, a sure-fire strike issue in any utility dispute. Yet, these people settled it during the life of the contract.

Our mediation experiences point to a belief in collective bargaining as, I think, one of the healthiest parts of our democracy because we have sat in and watched conflict situations resolve themselves. We see situations where people feel a principle is at stake in some particular issue on the table. Since no one can give up a principle, we have to find some alternate way of handling the problem and at the same time retain the principle. It is necessary to maintain the institutional integrity of both sides. But this can be done and it is being done. And collective bargaining works.

A PUBLIC VIEW OF GOVERNMENT INTERVENTION IN BARGAINING

John A. Grimes
Staff Reporter
The Wall Street Journal

A discussion of the public's view of government intervention in bargaining is a terribly broad mandate for anyone to fulfill in an afternoon. I don't know whether we will be able to do it here when so many have tried longer elsewhere, only to raise more questions than they answered.

Rather than giving you opinion, I feel my best role is to try to give you a view of how some things on the current collective bargaining scene look from a Washington observation point, along with some interpretations that occur naturally to those looking at the scene from that vantage point.

I don't think there is any doubt that the problem, if that is what one wishes to call it, of government intervention in collective bargaining stems from a few disputes in a few industries. Rightly or wrongly, these are the disputes that shape the public image of collective bargaining—the opinion of the public at large of just how this instrument of industrial democracy is working. Whether this is a fair test of the bargaining instrument is in itself a topic for considerable debate.

But it is not out of the realm of possibility that a few disputes in a few large industries can control public reaction to whether the present system of collective bargaining should be altered, either for good or ill depending on your view. And if clear and convincing public reaction is that the present system of collective bargaining should be changed, Congress will not be far behind in providing new mechanisms for dealing with big industrial labor-management disputes.

By and large, the bulk of the collective bargaining encounters in the country go on without any real notice. Contracts expire, strikes may occur, they are settled. But with or without the strikes, agreements are reached; if there is not a strike, usually no one takes notice of a contract dispute—because, in the public mind, that's the way collective bargaining is supposed to work. So what's new?

Well, if collective bargaining on an overall basis is working so well, why is there such concern? Why is there an issue at all? As soon as these questions are asked, the statistics which might show the overwhelming success of collective bargaining in the settlement of thousands upon thousands of

local and regional disputes are forgotten. Attention inevitably focuses on the major disputes.

In a few spectacular instances, collective bargaining in these major disputes has collapsed. I don't think collapse is too strong a word. Certainly the bargaining relationships in the railroad industry are in this state; it is a relationship, or really a non-relationship, characterized by an almost total lack of communication between labor and management, by repetitious wrangling and prolonged litigation. Certainly the passage of a compulsory arbitration law by Congress designed to cure all of this was an indication of collapse.

And I think that the fact that the steel industry and union negotiators were summoned to Washington last fall before they could reach a settlement says something about the state of collective bargaining relationships there, too. The maritime industry has been a continuous source of headaches to the federal government, with its repeated stoppages over manpower issues.

If this seems to say that the threat or occurrence of a strike in some cases now is taken to mean a breakdown in collective bargaining—rather than an integral part of collective bargaining which must be accepted if the concept of collective bargaining itself is accepted—then that's right. There are more and more strikes that the federal government is not going to let happen, whatever its publicly expressed devotion to the concept of "free" collective bargaining. It will not tolerate shut-downs in steel, railroad, maritime—even the auto industry, I would guess, should an industry-wide strike threaten.

To an extent, then, the right to strike as a part of the system of collective bargaining is being abridged in certain industries. This is, I think, a fact of life that unions and companies in key industries are going to have to live with in the future—the unions because their freedom to strike is not going to be as much of a freedom as it has been, the companies because some sort of "equalizer" may be demanded of them to compensate for this abridged right to strike. Indeed, if collective bargaining in its present form is going to have a better image, it must be the responsibility of the large companies and the large unions to see that it gets a better image. Either that or the public understanding of collective bargaining and its tolerance of the price of keeping collective bargaining "free" will have to be vastly more sophisticated than it now is.

There are those, of course, who contend that the right to strike should be sharply abridged, that unions now have far too much economic power. There are those, too, who cry that any abridging of the right to strike is oppression. But there are others who are beginning to ask: Is this so? Or is some "abridgment" the price of the constant readjustment of social and

economic relationships in a rapidly changing economy?

Lack of clear answers to the ultimate merit of any of these views provides, I believe, an important key to understanding the reasons for government intervention in major industrial disputes. With no clear agreement between unions, management and government as to what strikes should be allowed and which eliminated, and with no clear agreement between these parties as to what, if strikes in major industries are eliminated, should be put in their place to insure equity for labor, management, and public, the federal government intervenes in big industrial disputes because it has no other real answer for the situation. When federal law designed to avert major disputes has been exhausted without a settlement, it can either go to Congress for new law, or intervene—and intervention is the far easier course.

I don't think that any administration in the near future is going to reverse the trend of government intervention in labor-management affairs where that intervention is aimed at averting or resolving large industrial disputes, either through the natural procedures provided for in labor legislation on the books or as a result of the exhaustion of these procedures. There are a couple of good reasons for this. First, there is not yet any consensus on how the labor laws governing major disputes should be revised. Second, it has become an article of faith that strikes in some industries have the potential of wreaking more damage than the administration is willing to let happen. Much of this potential damage is expressed in economic terms, but a good bit of it also is political. No administration wants to bear the blame of not doing something when a major strike is going on. So when the pressures get great enough, the federal government will intervene, invoking the "public interest" as its mandate for intervention.

I think that, without question, the government can exert this mandate because it has a broad base of public support. The public really is not concerned with the intricacies of collective bargaining. The immediate reaction of most persons to any large-scale dispute is that they want to see it settled and settled quickly; the thought that a settlement forced by the federal government might damage the instrument of collective bargaining in the long run is not likely to occur to them.

Public support of government intervention in major disputes stems from several factors. First, the strike nowadays is a more damaging weapon in large industries because of the close interrelationship of the elements of a complex economy. Stoppages in major industries are more quickly and widely felt by broader sections of the public, and the public is apt to feel the strike well before the parties themselves are hurt. Second, the public now is less tolerant of strikes than it was even a decade ago. In the public mind labor unions have become considerable powers—and the public tends to be distrustful of big powers whether they be unions, business or govern-

ment, particularly when those powers seem to be throwing their weight around. In such cases the public wants an equalizer to step in, and in the case of major industrial disputes the federal government is looked to as the equalizer.

Additionally, a considerable cynicism has crept into the public's attitude toward collective bargaining. Part of this stems from the repetitive nature of some recent large disputes. In the maritime industry, for example, the issues of automation and crew sizes have now been the subjects of some three strikes over as many years. In the railroad industry, the main issue always seems to return to work rules changes.

When this occurs, the general feeling seems to be on the part of the public: "For Pete's sake, didn't they settle that the last time around?" The resulting feeling is that no real progress is being made through normal collective bargaining procedures. While strikes in the past may have had more tolerance, if not sympathy, from the public, the average man's patience with stoppages seems to be getting shorter. The question is arising: "Haven't we gotten past the stage where these fellows have to slug it out every so often?" An additional question that seems to be rising in the public mind is: "If collective bargaining is such a great thing, why isn't it able to put an end to all of this?"

The end result in the public mind is that, whatever merit they might or might not have, strikes are now being looked on as an irresponsible use of power. And because they are the result of the mechanism of collective bargaining, then the strike itself becomes proof that collective bargaining has collapsed. Whether this is going to lead to some rearrangement of relations at the bargaining table, either through new legislation affecting both parties or through a growing reluctance of unions to call increasingly unpopular strikes, is hard at this point to say. But if any legislative change is made in union-management bargaining relations, it probably will come only if the federal government manages to arrive at a new formula acceptable to both labor and management for the handling of major industrial disputes.

The federal government, in fact, has helped to shape the current public image of collective bargaining. Starting with the Kennedy administration, the factor of "the public interest" was injected into major industrial disputes more vigorously. Labor Secretary Arthur Goldberg was, in the early days of the administration, highly visible in his role as a strike settler. And while constantly supporting the principle of free collective bargaining, Mr. Goldberg insisted that collective bargaining could remain free only if it remained responsible to the public interest.

During the Johnson administration, there appears to have been less of a tendency to thrust the federal government into so many disputes. Mr. Johnson quite obviously saw that he could put his prestige on the line to

win a settlement of a dispute only so often for this to remain an effective instrument.

This lessening of White House intervention in major disputes does not mean that the practice will eventually cease. It will continue, but more likely on a case-by-case basis. You may see the appointment of a special board here, a White House conference of the disagreeing parties, with the President all but sitting at the bargaining table there, or the Labor Secretary handling a dispute by himself rather than involving the President. Mr. Johnson is likely, then, to "play it by ear," testing to see how he can prod disputes along to a settlement from behind the scenes without having to put his prestige on the line. Of course, he will lay the considerable prestige of the presidency on the line if he thinks he actually needs to, but he would rather not if he can help it.

There is, however, the danger of a certain momentum being built up even with the intentions of the federal government to keep intervention limited. Should the nation begin to see a quickening pace of major labor-management disputes, perhaps the administration may be forced to come up with proposals for changing the laws designed to deal with these disputes, such as the Taft-Hartley law and the Railway Labor Act.

The administration does not want to propose such changes now. Even though Mr. Johnson, in two of his three major messages to Congress early in the year, said he "intended to ask Congress to consider" changes in the Taft-Hartley law's provisions for dealing with national emergency disputes, you hear very little about such changes now. And I don't think you will see any changes in Taft-Hartley unless some large disputes begin to heat up.

Of course, logic might seem to dictate that a quiet period on the labor-management scene such as this spring seems to be would provide the best time to debate and study the changes deemed necessary in the labor laws dealing with strikes—but this is not the way Washington works. Even apart from those who see no reason to fix the roof when the sun is shining, there still is too much division of opinion about what should be done in the way of revising the labor laws. There still is no assurance that the changes could be confined to just those provisions dealing with emergency disputes. And unless nearly all controversy is removed from this area of the laws governing labor-management relations, proposed revisions are not likely to be brought up.

But suppose you do get labor legislation setting further curbs on strike powers presented to the Congress. If this comes in a crisis situation, I wouldn't want to be held too closely to any prediction as to what might come out. Congress, having once passed a compulsory arbitration law to deal with a threatened nationwide railroad strike, might be fed up enough

with wrangling in the transportation industry to enact something close to a compulsory arbitration law covering all disputes where major strikes are threatened or occur. This may seem a little extreme, but Congress with the bit in its teeth can run quite rapidly.

What the effect of this might be is hard to say. Public opinion can, in a crisis situation, swing violently enough to support an extension of the compulsory arbitration principle, or something close to it, to bargaining in all major industries. What might happen to the right to strike in a future crisis atmosphere, then, is difficult to predict. But if I were a union official, I would be more than a little worried about the public temper concerning collective bargaining. And if the public got fed up enough, I think I would worry if I were a businessman, too. The temptation in situations where solutions to major labor-management disputes seem too complex to fathom is for the public to set up a cry for someone who can tell both sides: "Settle it and settle it this way." If this cry is heeded, either by stern new legislation restricting collective bargaining or by increased intervention of the federal government at the bargaining table, both sides—management as well as labor—are likely to permanently lose some of the freedoms they have under the present system of collective bargaining.

SUMMARY

Don R. Sheriff
Associate Professor and Director
Center for Labor and Management
The University of Iowa

In closing the Tenth Annual Labor-Management Conference, our time is short and it is impossible to summarize in a few minutes the many ideas, concepts and values presented by our talented speakers.

The problem of labor disputes in essential industries has been posed, on the one hand, as a threat to national defense and economic stability, and on the other hand, as another invasion by the government in the private sector with the blame, wholly or in part, being laid at labor's door, management's door, or the government—depending on your point of view.

None of our speakers has offered any magic formulas for industrial peace, and I think most of them agree that labor and management must be permitted to bargain collectively without too many government restrictions; yet at the same time, the national interests of our country must be both protected and promoted.

However, our speakers did differ as to the reasons why we find the government assuming a stronger role in this area. They also differ as to the means or methods that should be used to resolve difficulties between the public and private sector.

In closing this Tenth Annual Labor-Management Conference, I do not think I have to tell you that a program of this nature is not the result of the work of one man or one group. It takes the coordinated efforts of many people. Therefore, I want to thank my colleagues whose creative abilities were responsible for the development of this theme and the securing of the speakers, as well as the clerical staff and the graduate students of the Center for Labor and Management who handled all the many program arrangements.

In adjourning this program I ask you to join with me in a show of appreciation to all of these people, but in particular to our eminent and articulate guest speakers—Mr. Fraser, Mr. O'Connell, Mr. Seldin, and Mr. Grimes.

Ladies and gentlemen, thank you for coming. Have a safe journey home. The Tenth Annual Labor-Management Conference stands adjourned.

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